KIAN HIN & CO.

v.

GOH & SONS ENTERPRISE SDN. BHD. & ANOTHER CASE

HIGH COURT MALAYA, MALACCA
WAN YAHYA J
[ORIGINATING MOTION NO. 32-1 & 32-2 OF 1988]
24 MAY 1988

LANDLORD AND TENANT: *Rent - Rent Control - Tenants of rent control premises ordered by Appeal Board to vacate premises - No records of the hearing before the Appeal Board were available - Hearing before Appeal Board should be by way of rehearing - Undated written judgment of the Chairman based on documents and records of proceedings before the Land Tribunal - Whether wrong in law - Whether failure of Appeal Board to consider all the grounds of appeal wrong in law - Whether decision of Appeal Board must be unanimous.*

CONSTITUTIONAL LAW: *Legislation - Control of Rent Act 1966 - Control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970.*

The 2 originating motions were identical except for the names of the applicants and both prayed for an order of *Certiorari* to quash the decision of the Appeal Board.

The applicants were tenants of rent control premises who were ordered to vacate the premises by the Appeal Board. At the initial hearing before the Rent Tribunal, the Landlord had applied under s. 18 of the Control of Rent Act 1966 for possession for development purposes. The tenants opposed this on the basis that s. 18(1) had not been satisfied. The Rent Tribunal concluded that these requirements had been satisfied. The tenants appealed against the entire decision of the Rent Tribunal. At the hearing before the Appeal Board of which there were no records the Board dismissed the appeal.

The applicants then applied for an order of Certiorari based on the ground that r. 26 of the Control of Rent (Malacca) (Rent Tribunal and Appeal) Rules 1970 had not been complied with in that the applicants were denied the right to be reheard. They also alleged that the Appeal Board failed to consider fully the grounds of appeal and that the decision of the Appeal Board had to be unanimous.

Held:

[1] The failure on the part of the Appeal Board to keep the records of the proceedings led to the inference that there was no rehearing accorded to the applicants and as such it is an act which clearly affected the principle of natural justice. Any judgment, arrived at in breach of this principle, is a nullity.

[2] The grounds of decision indicated that the Board had failed to consider the other two provisions of s. 18(1) which formed part of the grounds of appeal and therefore a failure to do so had deprived the applicants their chances of succeeding in the appeal.

[3] The three errors of law are of a serious nature and taken together they amounted to a denial of justice which had affected the jurisdiction of the Board.

[Application allowed.]

Legislation referred to:
Control of Rent Act 1966, ss. 12(S), 15(4), 18, (1), (1)(a), (b), (c), (2), 32
Control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970, rr. 26, 27

JUDGMENT

Wan Yahya J:

The two originating motions are substantially identical except for the names of the applicants. In both these cases the applicants prayed for an order of *certiorari* to quash the order of the Rent Board.

The fact of the case, as I can gather from some of the records produced before us, are as follows;

The applicants who are tenants of Rent control premises were ordered by the Appeal Board to vacate the premises occupied by them. At the initial hearing before the Land Tribunal - the records of proceedings of which were properly kept and produced before us as exhibit - the Landlord had applied under s. 18 of the Control of Rent Act 1966 for possession for development purposes. The tenants opposed this application on the grounds that the requirements of s. 18(1) had not been fully satisfied. The Rent Tribunal after hearing both parties came to the conclusion that these requirements, in particular provision 18(1) (b) had been satisfied. The tenants then appealed against the entire decision of the Land Tribunal. In their memorandum of appeal the solicitors for the tenants set out specifically their dissatisfaction with the findings of the Tribunal in respect of s. 18(1)(a), (b) and (c) as well as s. 18(2).

At the hearing of the appeal before the Land Appeal Board of which no records were available and presumably none was kept, the Board dismissed the appeal. Evidence of this hearing only appeared incidently in the order of the Board dated 27 February 1987.

The applicants particularised 7 grounds upon which they sought the relief out of which only 3 merit our consideration.

One such ground is that the Appeal Board denied the applicants their rights to have their cases reheard before the Board as required under r. 26 of the control of Rent (Malacca) (Rent Tribunal and Appeal Board) Rules 1970.

Section 26 reads:

> The appeal shall be by way of re-hearing by the Appeal Board which shall have full power to receive further evidence by oral examination before the Board, by affidavit or by evidence taken before an examiner or Commissioner of Oaths.

It is obvious from the above that the tenants are not only entitled by law to have their cases reheard before the Board but the Board is further given the power to receive further evidence both orally and by affidavit.

In this case, as I observed earlier, no records of the proceedings before the Appeal Board were available and therefore there is nothing to suggest that the applicants' allegations were untrue. On the contrary, the undated written judgment signed by the Chairman of the Appeal Board appeared to have based its conclusion allegedly on the documents and records of proceedings before the Land Tribunal. If there was any record of proceedings I am sure it would have been produced by the respondents. Failure to produce such records must lead to the inference that none was kept and therefore no rehearing was accorded to three

applicants. It is clear from s. 15(4) when read with s. 12(S) of the Control of Rent Act 1966 that the Chairman is obliged to keep minutes. In the absence of such minutes of proceedings I would presume that there had been no proper rehearing. A denial to the applicants of their rights to a rehearing is an act clearly affecting the principle of natural justice. A judgment arrived at in breach of this principle is a nullity.

The next ground relates to the failure of the Appeal Board to consider the grounds of appeal. The applicants had expressed their dissatisfaction with the Tribunal's finding relating to all the three requirements under s. 18(1) but the grounds of decision indicate that the Chairman had merely considered the provision of s. 18(1)(b) alone and had entirely disregarded the other two provisions. There is a great difference between a defective decision arrived at after hearing a case and a decision made without hearing the appellant's case at all. The applicants were entitled to be heard on the other two grounds and failure to decide these had deprived then of their chances to succeed in the appeal.

The third point raised by the applicants is on the nature of the written judgment. The applicants contend that it is not the unanimous decision of the Board but was merely the decision of the chairman as nothing therein indicates that the other two had concurred with him. However Counsel for applicant was not able to cite any relevant provision showing that the decision should be unanimously made.

Now if I may refer to the undated judgment. Under r. 27 such judgment must be pronounced on hearing of appeal or at a subsequent date. The order under s. 32 was made on 27 February 19 February 1987 whereas the hearing, according to the order, was on 18 February 1987. As the judgment was undated it is impossible to say whether it was pronounced on the date of hearing on 18 February 1987 or 27 February 1987. As it was not an oral judgment it is unlikely to be pronounced on the date of hearing.

To my mind the three errors of law accounted above are of a serious nature. Taken together they amounted to a denial of justice to the applicants which had affected the jurisdiction of the Board.

I shall therefore allow the application and quash the order of the Board.

Also found at [1988] 2 CLJ 760